# SINGAPORE REPORTS.

## ISMAIL BIN HAJI MARICAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.) February 14, 1951]

[Singapore — Magistrate's Appeals Nos. 176 and 177 of 1950]

*Road Traffic Ordinance — Speed Limit — Constitution of Built-up areas.*

There were two appeals against conviction for exceeding the speed limit in a built-up area in the Rural area. Power to impose a speed limit on certain roads or portions of roads was conferred on the Governor in Council by section 87(1) of the Road Traffic Ordinance. The Governor in Council made Rules imposing the speed limit in built up areas which were defined in the rules as:

"(b) such road within the boundaries of the Rural Board area which the appropriate authority shall by notification in the Gazette direct to be a built-up area."

The Rural Board subsequently issued a notification in the following terms "In exercise of the powers conferred by Rule 2(1) etc. the Rural Board as the appropriate authority makes the following notification..." The schedule to this notification gave the length of roads which were to be deemed to be in a built-up area".

**Held**, that the power conferred on the Governor in Council did not authorise a delegation of the powers and therefore the notification made by the Rural Board on the assumption that powers were conferred upon it could not have any legal effect.

MAGISTRATE'S APPEALS.

*Mark Morrison* for the appellant.

*A. D. Farrell* (D.P.P) for the Crown.

*Cur. Adv. Vult.*

**Murray-Aynsley, C.J.** : — These were two appeals against conviction for exceeding the speed limit in a built-up area in the Rural area. There is no complication in the facts and the speed of the vehicle was amply proved. The sentences were not excessive.

Certain questions of law arose. The imposition of a penalty for exceeding a certain speed in a built-up area was done by rules made under the Road Traffic Ordinance of 1941. There is no express power given to the Governor in Council to make rules on this particular point. By section 24(2) power is given to the Chief Police Officer with the concurrence of the highway authority "to prohibit the driving of motor vehicles ..... above a specified speed over any specified road or part of a specified road ...."

The prosecution relied on the general powers given by section 87(1) of the Ordinance. This section says "The Governor in Council ..... may make rules for any purpose for which rules may be made under this Ordinance and for prescribing anything which may be prescribed under this Ordinance and generally for the purpose of carrying this Ordinance into effect ....." I take this to mean that where any one is given power to prescribe anything the Governor in Council may make rules to that effect. I consider, further, that the power to prohibit given under section 24(2) is a power to prescribe. Therefore, I consider that the Governor in Council had power to impose a speed limit on certain roads or portions of roads.

The next point is whether the Governor in Council effectively exercised such powers. The method adopted was as follows. There was an imposition of a speed limit in what were described as built-up areas. There followed a definition of built-up areas. The definition relevant to the present case was as follows :—

"(b) such road ..... within the boundaries of the Rural Board area which the appropriate authority shall by notification in the Gazette direct to be a built-up area." (G.N. S. 345 of 1949).

By Gazette Notification s.4 of 1950 the Rural Board issued a notification in the following terms — "In exercise of the powers conferred by rule 2(1) etc. the Rural Board as the appropriate authority hereby makes the following Notification :—

1. This Notification may be cited as the Built-up Area (Rural Board) Notification, 1949.
2. The Rural Board as the appropriate authority hereby directs that the lengths of road specified in the Schedule hereto shall be deemed to be in a built-up area."

The schedule contains the lengths of road in which the occurrences in question happened.

Several objections have been taken to the rules and the notification. Of rather a formal character is the objection that the expression "appropriate authority" is wihout meaning. In the definition relating to the Municipal Area the expression is "appropriate highway authority". This expression is defined in the Ordinance. The definition regarding the Rural Area might have said "appropriate highway authority" or even more simply "the Rural Board" but it did neither. The Rural Board thought that it was the authority meant and acted on it.

A more fundamental objection is that rules appear to effect a delegation which is not authorized by law. The Rural Board, judging by the wording of the notification in question, thought that powers were being conferred upon it. The learned Crown Counsel, who supported the conviction, argued that it was not a question of delegation but merely of description. That the former definition which had reference to lamp-posts, in effect, permitted the Rural Board to add to

or subtract from the area affected by putting up or taking down lamp-posts. That lamp-posts and direction are both questions of fact. This ingenious argument (as to the soundness of which I reserve my opinion until necessary) lets in the argument that if the direction is a fact it must be proved, which it was not.

For this reason the appeal must be allowed and the convictions quashed.

*Appeal allowed.*

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## LIM PENG KOI v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 6, 1951]

[Singapore — Magistrate's Appeal No. 101 of 1950]

*Evidence Ordinance s. 33 — When evidence taken in a judicial proceedings can be used in a subsequent judicial proceedings — Delay and expense which the Court consider unreasonable.*

In this case the appellant had been convicted and sentenced to six months rigorous imprisonment. The only evidence of the crucial facts in issue was given at a prior judicial proceedings which the prosecution sought to use under section 33 of the Evidence Ordinance. This evidence was strongly challenged by the defence. When the evidence was originally taken certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of section 33 of the Evidence Ordinance was not the evidence originally given but an expurgated version compiled by the Police Officer and Counsel who at that stage represented the appellant.

Held, (1) that in determining when the delay and expense is unreasonable under section 33 of the Evidence Ordinance the Court must take into consideration the seriousness of the charge, whether it is one for which the accused is likely to be sentenced to imprisonment or not, and the character of the evidence whether the evidence is challenged by the defence or is of a purely formal character; (2) that in this case the trial is not satisfactory and therefore there must be a new trial.

MAGISTRATE'S APPEAL.

*M. B. Brash* for the appellant.

*A. V. Winslow* (D.P.P.) for the Crown.

**Murray-Aynsley, C.J.** : — This case raised a question as to the application of section 33 of the Evidence Ordinance. The section reads as follows :—

"33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding."

Here we have to consider the meaning of the words "without an amount of . . . . expense which under the circumstances of the case the Court considers unreasonable". To determine when the expense is unreasonable is not a matter in which absolute standards can be applied. In particular two things are of importance; the seriousness of the charge and the character of the evidence. On the first point, in particular, it should be regarded as a very serious matter to allow evidence given on another occasion to be read when a person is charged with an offence for which he is likely to be sentenced to imprisonment. On the second it may be that the evidence given is not challenged by the defence and it may be evidence of a purely formal character.

In the present case the appellant was convicted and sentenced to six months rigorous imprisonment. The evidence was also the only evidence of the crucial facts in issue and it was very strongly challenged by the defence. A further difficulty arose from the fact that when the evidence was originally given certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of the section in question was not the evidence as originally given but an expurgated version compiled by the Police Officer and counsel who at that stage represented the appellant. I do not see that there is any legal justification for this proceeding, but by itself it might not in the circumstances be of sufficient importance to justify quashing the conviction. Although at the time no objection was taken by the gentlemen who then represented the appellant, I cannot consider the trial as satisfactory and I, therefore, ordered a new trial.

*Retrial ordered.*

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## MUHAMED ABDUL RAHMAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 7, 1951]

[Singapore — Magistrate's Appeal No. 158 of 1950]

*Price Control Ordinance (No. 6 of 1950), s. 9 — "Business in the course of which price-regulated goods are normally sold" — Meaning of.*

The words "business in the course of which price-regulated goods are normally sold" mean that price-regulated goods are normally sold in that particular business, not in similar business.